

16247

NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
97G0540(III)

IN THE MATTER OF)	
)	
NATHANAEL PENDLEY,)	REPRIMAND
ATTORNEY AT LAW)	
)	

On April 16, 1998, the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by the State Bar.

Pursuant to section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required, and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand, or a censure to the respondent attorney.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand, and I am certain that you will understand fully the spirit in which this duty is performed.

Prior to June 1995, you undertook to represent Prudence Rochelle and a number of other individuals respecting their civil claims against the Durham Public Schools Board of Education, following the merger of the Durham county and city school systems. You filed a complaint in the U.S. District Court for the Middle District of North Carolina on behalf of your clients in June 1995. Thereafter, the defendant School Board served you with discovery requests.

You did not file timely responses to the School Board's discovery requests and, on Nov. 22, 1996, Hon. Russell Eliason granted the School Board's motion for an order compelling responses. Your clients were given 20 days in which to comply with the discovery order. Despite the entry of this order, you failed to respond to the School Board's discovery. Thereafter, the School Board filed a second motion to compel, to which you also filed no response. On Feb. 10, 1997, Judge Eliason entered a second order compelling discovery responses to be filed by Feb. 20, 1997. Judge Eliason also ordered your clients to pay \$100 to the School Board in attorneys fees and ordered you to show cause why you should not be removed as counsel for the plaintiffs.

Just before the deadline imposed by Judge Eliason's second order, you did file responses to the School Board's discovery requests. These responses, however, were not complete. Although you have indicated that one or more of your clients were uncooperative, it appears that the delay in responding to discovery was in fact the result of your own neglect and that you failed to tell your clients about the discovery deadline until the last minute.

By failing to file timely responses to discovery questions and by failing to comply with Judge Eliason's Nov. 22, 1996 discovery order, you neglected a legal matter in violation of Rule 6(b)(3) of the Rules of Professional Conduct and engaged in conduct prejudicial to the administration of justice in violation of Rule 1.2(d).

The hearing on the court's order to show cause was set for March 20, 1997. Although the clerk's office provided you with proper notice of this hearing, neither you nor your clients appeared at this proceeding. As a result, Judge Eliason entered an order removing you as counsel for the plaintiffs and recommending that the plaintiffs' lawsuit be dismissed. Your conduct in failing to attend the show cause hearing left the court in the awkward position of having to determine whether your clients were aware of the procedural posture of the case and delayed an appropriate resolution of the matter. Consequently, the Grievance Committee found that your conduct in this regard was prejudicial to the administration of justice in violation of Rule 1.2(d).

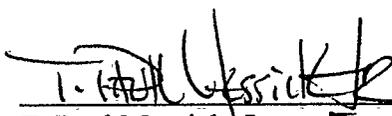
The Committee further concluded that your misconduct was aggravated by the fact that you have been previously disciplined by the State Bar. The Committee wishes to caution you that any further violations of the Rules of Professional Conduct on your part could well result in more substantial discipline against you.

You are hereby reprimanded by the North Carolina State Bar due to your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a

reprimand by the Grievance Committee, the costs of this action in the amount of \$50.00 are hereby taxed to you.

Done and ordered, this 2nd day of May, 1998.



T. Paul Messick, Jr.
Chair, Grievance Committee